

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**FILED****JAN 28, 2008****CATHY A. GATTERSON, CLERK
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Nos. 07-17196
07-17395

Plaintiff - Appellee,

D.C. Nos. CV-07-00027-DAW
CR-06-00012-DAW
District of the Northern Mariana
Islands

v.

JOHN S. PANGELINAN,

FILED
Clerk
District Court

Defendant - Appellant.

ORDER

JAN 28 2008

Before: GRABER and McKEOWN, Circuit Judges.

For The Northern Mariana Islands
By _____
(Deputy Clerk)**Case No. 07-17196**

In case number 07-17196, appellant appeals from (1) the district court's Order dated September 6, 2007, which denied appellant's 28 U.S.C. § 2255 motion filed August 22, 2007, and (2) the district court's Order dated October 11, 2007, which denied appellant's motion for reconsideration filed September 25, 2007. As to this case, the request for a certificate of appealability is denied. *See* 28 U.S.C. § 2253(c)(2). All outstanding motions and requests are denied as moot.

The Clerk shall close the docket in case number 07-17196.

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Case No. 07-17395

In case number 07-17395, appellant appeals from (1) the district court's Order dated October 29, 2007, which denied appellant's 28 U.S.C. § 2255 motion filed October 25, 2007, and (2) the district court's Order dated December 3, 2007, which dismissed appellant's November 23, 2007, motion as an unauthorized second or successive section 2255 motion. The request for a certificate of appealability is granted in this case as to the following issues: (1) whether the district court erred when it declined to entertain the merits of appellant's section 2255 motion, filed October 25, 2007, on grounds that appellant was no longer "in custody;" and (2) whether the district court erred when it construed and dismissed appellant's November 23, 2007 "motion for disposition" of the section 2255 motion filed on October 25, 2007, as an unauthorized second or successive section 2255 motion. *See* 28 U.S.C. § 2253(c)(3); *see also* 9th Cir. R. 22-1(e).

We sua sponte grant appellant leave to proceed in forma pauperis based on his in forma pauperis status in appeal number 97-10032. The Clerk shall change the docket to reflect appellant's in forma pauperis status.

Counsel is hereby appointed for appellant for purposes of this appeal. Counsel will be appointed by separate order. If appellant does not wish to have

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appointed counsel, appellant shall file a motion asking to proceed pro se within 21 days of the date of this order.

The Clerk shall serve a copy of this order by facsimile transmission and mail on Judge Alex R. Munson, U.S. District Court for the District of the Northern Mariana Islands, P.O. Box 500687, Saipan, MP 96950, (FAX: (670) 236-2911), who is requested to locate appointed counsel. The district court shall provide the Clerk of this court with the name and address of appointed counsel by facsimile transmission (FAX: (415) 355-8111) within 14 days of locating counsel.

The opening brief is due April 7, 2008. There was no appearance by the appellee in the district court. The Clerk shall serve a copy of this order on Craig N. Moore, Esq., USNMI - Office of the United States Attorney, P.O. Box 500377, Saipan, MP 96950, who is requested to enter a notice of appearance on behalf of appellee in this case. By May 8, 2008, appellee shall file an answering brief or a letter indicating that no answering brief will be filed. If appellee files an answering brief, the optional reply brief will be due 14 days after service of the answering brief.

Because there were no hearings in the district court, the clerk of that court shall forward the certificate of record immediately. See 9th Cir. R. 11-2.